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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.,
Plaintiff, Counter-defendant

v.

APPLE INC.,
Defendant, Counterclaimant

IN RE APPLE IPHONE ANTITRUST
LITIGATION

DONALD R. CAMERON, *et al.*,
Plaintiffs

v.

APPLE INC.,
Defendant.

Case No. 4:20-cv-05640-YGR-TSH
Case No. 4:11-cv-06714-YGR-TSH
Case No. 4:19-cv-03074-YGR-TSH

**DEFENDANT APPLE INC.'S
ADMINISTRATIVE MOTION TO FILE THE
JOINT DISCOVERY LETTER BRIEF
UNDER SEAL**

Hon. Yvonne Gonzalez Rogers
Hon. Thomas S. Hixson

Apple Inc. (“Apple”) brings this administrative motion under Civil Local Rules 7-11(a) and 79-5(d)-(e) for an order granting Apple leave to file under seal the Joint Discovery Letter Brief Regarding Discovery from Non-Party Samsung Electronics America, Inc. (the “Joint Discovery Letter Brief”).

Civil Local Rule 79-5 provides that documents, or portions thereof, may be sealed if a party “establishes that the documents, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law.” Civ. L.R. 79-5(b). Under this standard, a party seeking to seal a document generally must overcome the “strong presumption in favor of access” that applies to court documents other than those that are traditionally kept secret. *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (citations omitted). However, the “public has less of a need for access to court records attached only to non-dispositive motions because those documents are often ‘unrelated, or only tangentially related to the underlying cause of action.’” *Id.* at 1179 (citations omitted). Instead, a “‘good cause’ showing under Rule 26(c) [of the Federal Rules of Civil Procedure] will suffice to keep sealed records attached to non-dispositive motions.” *Id.* at 1180; *In re NCAA Student-Athlete Name & Likeness Licensing Litig.*, 2013 WL 3014144, at *1 (N.D. Cal. Jun. 17, 2013). A party seeking to seal such material must make a “particularized showing of good cause with respect to any individual document.” *San Jose Mercury News, Inc. v. U.S. Dist. Court, N. Dist. (San Jose)*, 187 F.3d 1096, 1103 (9th Cir. 1999). Sealing requests must also be “narrowly tailor[ed].” Civ. L.R. 79-5(b).

Subsection (e) of Local Rule 79-5 sets forth procedures that apply when a party seeks to file information designated as confidential by an opposing party or a non-party. This Administrative Motion is based on Plaintiff and Counter-Defendant Epic Games, Inc.’s (“Epic’s”) designation of information in the Joint Discovery Letter Brief as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under the protective orders entered in the related above-captioned cases. Apple does not believe that the Joint Discovery Letter Brief meets the standard for sealing, but is filing it under seal as a courtesy to Epic and Samsung. Pursuant to subsection (e)(1) of Local Rule 79-5, Epic has four days to file a declaration establishing that the material is “sealable” (as defined in Local Rule 79-5(b)).

Dated: January 19, 2021

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Jason Lo
Jason C. Lo

Attorneys for Defendant Apple Inc.